

STATE OF MICHIGAN  
COURT OF APPEALS

---

CAROLE J. SEMAN and LOUIS J. SEMAN,

Plaintiffs-Appellees,

v

YON Y. GRAHAM, M.D., DENNIS W.  
KONZEN, M.D., PROMED PHYSICIANS, and  
BORGESS HEALTH ALLIANCE,

Defendants-Appellants.

---

UNPUBLISHED

May 22, 2007

No. 265969

St. Joseph Circuit Court

LC No. 03-000764-NH

Before: White, P.J., and Saad and Murray, JJ.

PER CURIAM.

Defendants appeal by leave granted the trial court's order denying their motion to enforce a settlement agreement. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs filed suit alleging that defendants committed medical malpractice. The parties agreed to facilitated mediation in an attempt to settle the matter. When the parties arrived for the mediation, defense counsel indicated that he intended to file a motion for summary disposition based on *Aspey v Memorial Hosp*, unpublished per curiam opinion of the Court of Appeals, decided April 19, 2005 (Docket No. 251110). In that case, another panel of this Court held that an affidavit of merit signed outside Michigan must contain a certification from the clerk of the court where the affidavit was signed, certifying that the notary public had the authority to act. An affidavit without the requisite certification was invalid, and did not toll the statute of limitations applicable to a medical malpractice action. *Id.* at 4-5. Defense counsel indicated that he intended to assert that, because plaintiffs' affidavit of merit was signed in California and did not contain the requisite certification it was invalid, and that the action should be dismissed.

Plaintiffs and their counsel conferred, and decided to continue with the mediation. Eventually, the parties agreed to settle the case for \$15,000. Defense counsel drafted a letter confirming the settlement and a release and indemnification agreement, and tendered to plaintiffs' counsel a check for \$15,000.

However, not long after the mediation, in *Aspey v Memorial Hosp (On Reconsideration)*, 266 Mich App 666, 682-683; 702 NW2d 870 (2005), this Court held that the requirement for notary certification would be applied only prospectively, and that a conforming affidavit could

be filed in any medical malpractice case then pending. Plaintiffs refused to sign the release and indemnification agreement and returned the check, taking the position that a binding settlement did not exist, and suggesting that mediation be reconvened.

Defendants moved to enforce the settlement agreement, arguing that MCR 2.507(H)<sup>1</sup> did not bar enforcement of the settlement because plaintiffs could not deny that the parties had reached a settlement. In response, plaintiffs denied that any settlement reached by the parties was legally binding because no signed writing embodied the terms of any settlement agreement.

The trial court denied defendants' motion to enforce the settlement agreement. The trial court relied on *Michigan Mut Ins Co v Indiana Ins Co*, 247 Mich App 480; 637 NW2d 232 (2001), in which this Court held that a settlement agreement is a contract and is governed by the legal principles applicable to contracts, but is unenforceable unless it also satisfies the requirements of MCR 2.507(H). *Id.* at 483-485. The trial court concluded that the settlement agreement was unenforceable because it was not placed on the record in open court or memorialized in a signed writing.

We review the interpretation of a court rule de novo on appeal. *St George Greek Orthodox Church v Laupmanis Assocs, PC*, 204 Mich App 278, 282; 514 NW2d 516 (1994).

MCR 2.507(H) provides:

An agreement or consent between the parties or their attorneys respecting the proceedings in an action, subsequently denied by either party, is not binding unless it was made in open court, or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney.

On appeal, defendants argue that the trial court erred by concluding that MCR 2.507(H) precluded enforcement of the settlement agreement because plaintiffs have never denied that the parties reached a settlement in this matter.

The distinction defendant seeks to draw between plaintiffs' denying the existence of a legally binding agreement, as opposed to the existence of an agreement made at the conclusion of the facilitation, is irrelevant. In *Michigan Mutual* we held that even though an oral settlement agreement may meet the requirements of a contract, it is nonetheless unenforceable in a court of law unless it also satisfies MCR 2.507(H):

However, this Court will not enforce a settlement agreement that fulfills the requirements of contract principles if that agreement does not also satisfy the requirements of the court rule. [*Id.* at 484-485.]

---

<sup>1</sup> Now MCR 2.507(G). The parties' briefs refer to the rule as MCR 2.507(H); therefore, this opinion does as well.

In other words, even if plaintiff was not denying that on the day of facilitation an oral agreement was reached, the agreement is still unenforceable because of the special requirements for enforceability of settlement agreements under the court rule. *Id.*

Here, plaintiffs never agreed in writing or on the record to the terms that were apparently reached at the facilitation. Thus, even though that agreement may have been valid under contract law, it was not enforceable in court because there was no compliance with MCR 2.507(H).

Affirmed.

/s/ Helene N. White  
/s/ Henry William Saad  
/s/ Christopher M. Murray